IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 14302 of 2006(C)

PETITIONER:

LATHA BALAN, W/O. BALAN,
41 YEARS, AYYAPPATH HOUSE,
AMMADAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, THIRUVANANTHAPURAM.**

2. **MEDICAL OFFICER IN CHARGE, PRIMARY HEALTH CENTRE, PARALAM, THRISSUR.**

3. **DISTRICT MEDICAL OFFICER, THRISSUR.**

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) 14302/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT IN WP(C) NO.17740/04 DT.18.6.04.

EXT.P2:- COPY OF THE LETTER DT.23.6.04 ISSUED BY THE MEDICAL OFFICER IN CHARGE, PARALAM.

EXT.P2(a):- COPY OF THE LETTER DT.9.7.05 ISSUED BY THE MEDICAL OFFICER IN CHARGE , PARALAM.

EXT.P3:- COPY OF THE REPRESENTATION DT.7.10.05 FILED BY THE PETITIONER BEFORE THE RESPONDENTS 1 AND 3.

EXT.P4:- COPY OF THE ORDER NO.501//2005 DT.25.11.05 OF THE GOVERNMENT.

EXT.P5:- COPY OF THE JUDGMENT IN WP.(C) 22376/05 DT.14.12.05.

EXT.P6:- COPY OF THE LETTER DT.17.3.06 ISSUED BY THE RESPONDENT.

/TRUE COPY/

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K.K.DENESAN, J.

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WP(C).No.14302 OF 2006-C.

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Dated this the 4th day of January, 2007.

J U D G M E N T

The petitioner had worked as Casual Part Time Cleaner in the office of the 2nd respondent. The 3rd respondent is the Controlling Officer. Subsequently her service was disengaged and the vacancy was reported to the Employment Exchange and a regular hand was appointed in that vacancy. Her initial appointment was not from the list of candidates sponsored by the Employment Exchange. However, she raised the contention that, that is immaterial in considering her case for the benefit of the Government orders on the subject (Ext.P4) and the decisions of this Court (Ext.P12 judgment). This Court directed the Government to consider the case of the petitioner and pass appropriate orders. Consequently Ext.P6 Government letter dated 17-3-2006 was passed informing the petitioner that as she had not been engaged as Casual Sweeper in the Public Health Centre, Paralam, Thrissur but only on daily wages whenever the sanctioned post of Part Time Cleaner remained vacant, which post is occupied by a candidate sponsored by the Employment Exchange, her request for continuance in service does not

deserve consideration.

2. Counsel for the petitioner submits that the Government did not take note of the findings and observations made in Ext.P1 judgment and the orders issued by the Government themselves in Ext.P4 Government Order.

3. Counter-affidavit filed by the 2nd respondent endorses the same view as taken in the impugned order. But it does not say anything about the contentions raised by the petitioner based on Exts.P1 and P4.

4. Having heard the counsel for the petitioner and the Government Pleader for the respondents, I am of the view that Ext.P6 Government letter is liable to be set aside for non-consideration of relevant materials. After an elaborate consideration of the plight of Part Time Sweepers and similar categories of employees, this Court made certain observations in order to alleviate their hardships and held in Mercy's case, (WP(C).No.30927/2003 referred to in Ext.P1) that Part Time Casual Sweepers and similarly situated persons who were engaged prior to 6-10-2003 shall be allowed to continue in service and if already retrenched shall be reinstated in service. Ext.P1 judgment directs that subsequent to that judgment, Part Time Sweepers are to be appointed only through the Employment

Exchanges and in the event of delay, it will be open to the Controlling Officers as directed in the Government Order dated 6-10-2003 to have the service of such employees on contract basis, for two months. The Judgment further directs that they shall be replaced at the earliest by regular hands through the Employment Exchange.

5. The petitioner's service was utilised by the respondents though by engaging her on daily wages prior to 6-10-2003 and therefore, she is entitled to the benefit of Ext.P1 judgment. It is true that the Government took up the judgment in appeal. But before the Division Bench had occasion to consider the correctness or otherwise on Ext.P1 judgment, the Government themselves came forward to issue Govt. Order 2-8-2005 extending certain benefits to Part Time Casual Sweepers who were in service and whose cases were dealt with by this Court in Ext.P1 judgment. On certain aspects, the benefits granted by the Government are larger than the benefits earlier granted. These aspects were taken note of by the Division Bench and the appeals were disposed of with the direction that the parties were entitled to get the benefit of Government Order dated 2-8-2005. Subsequently, Government felt that certain aspects were omitted to be considered by the Government while

issuing Government order dated 2-8-2005 and has come out with Ext.P4 G.O. dated 25-11-2005. The petitioner is certainly entitled to enjoy the benefits conferred by Ext.P4 G.O. to the extent they are applicable to her case. In Ext.P5 judgment, this Court took note of para.10 of Government Order dated 2-8-2005 and directed the Government to consider the case of the petitioner in the light of the benefits granted by that Government Order. Ext.P4 G.O. which has been issued replacing Government Order dated 2-8-2005 contains verbatim reproduction of para.10 of Government Order dated 2-8-2005. Para.10 which was extracted in Ext.P5 judgment is once again extracted herewith, so that the 1st respondent shall not omit to consider the claim of the petitioner under that paragraph:

> "There could be a few cases where the existing casual sweepers were terminated in accordance with the Government Order of 19-7-2003 and new persons selected through Employment Exchange. There would then be 2 claimants for the same post. This would be decided on a case to case basis, if necessary, accommodating such persons in other offices. Such cases will also be reported to Government and absorption done only under the orders of the Government."

6. Government has a duty to consider the case of the petitioner in the light of the orders issued as above. For its omission to do so, Ext.P6 is set aside. The 1st

respondent is directed to consider the case afresh in the light of para.10 of Ext.P1 Government Order and grant her appropriate relief as expeditiously as possible. Time for compliance two months from the date of receipt of a copy of this Judgment.

The writ petition is disposed of as above.

K.K.DENESAN, JUDGE.

kvs/-